

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
THE EMPLOYEES RETIREMENT SYSTEM
OF THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO, AND
THE PUERTO RICO PUBLIC BUILDINGS
AUTHORITY,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**INFORMATIVE MOTION OF FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO IN RESPECT OF THE COURT’S ORDER TO
APPEAR FOR URGENT STATUS CONFERENCE [ECF NO. 18643]**

To the Honorable United States District Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”),
as the sole Title III representative of the Commonwealth of Puerto Rico (the “Commonwealth”),

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (“Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

the Puerto Rico Public Buildings Authority (“PBA”), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth and PBA, the “Debtors”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² respectfully submits this informative motion (the “Informative Motion”) in respect of the Court’s *Order to Appear for Urgent Status Conference* [ECF No. 18643] (the “Order”) concerning the confirmation hearing (the “Confirmation Hearing”) to consider confirmation of the *Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [ECF No. 17627] (as it may be amended, modified, or supplemented, the “Plan”). The Oversight Board respectfully states as follows:

1. On October 5, 2021, the Oversight Board filed a status report in connection with the October 6, 2021 omnibus hearing [ECF No. 18401] (the “Status Report”). The Status Report informed the Court “the Oversight Board and the Government’s discussions have focused on legislation for the Plan [House Bill 1003 (“HB 1003)], which would authorize the issuance of the new general obligation bonds and contingent value instruments.” Status Report ¶ 5.

2. To that end, the Status Report (1) explained that, on September 30, 2021, the Puerto Rico House of Representatives approved HB 1003, “[h]owever, the approved version . . . differ[ed] significantly from the Bill that was originally proposed” in that it “eliminate[d] all of the pension-related language that was initially included in the proposed Bill and expressly condition[ed] the authorization for the issuances contemplated by the Plan upon the Oversight Board not including any cuts to retired government employees’ pensions in the Plan”; (2) informed the Court that the Puerto Rico Senate would next consider HB 1003; and (3) expressed the Oversight Board’s “hopes

² PROMESA is codified at 48 U.S.C. §§ 2101–2241.

that final legislation passed by the Senate, and, to the extent that differences exist, upon conference, the House, will reflect the discussion between the Oversight Board and the Legislature.” *Id.*

3. Additionally, in the Status Report, the Oversight Board cautioned that, “in view of the continuing propounding of legislation imposing financial conditions inconsistent with accomplishing the Oversight Board’s statutory mandates,” it was “uncertain whether the currently proposed plan of adjustment can be confirmed without modification, but is continuing to work towards that end.” *Id.* ¶ 6.

4. Following numerous discussions among the Oversight Board, the Governor, and the Legislative leaders, on October 14, 2021, the Oversight Board issued a letter to Governor Pierluisi and Legislative leaders (the “October 14 Letter”) setting forth the Oversight Board’s positions concerning, among other things, the Plan’s treatment of pensions, in the hopes of reaching agreement on HB 1003. A true and correct copy of the October 14 Letter is attached hereto as **Exhibit A**.

5. On Sunday, October 17, 2021, the Oversight Board met with Legislative leaders and members of Governor Pierluisi’s administration concerning HB 1003 (the “October 17 Meeting”) in light of the Oversight Board’s October 14 Letter.

6. Thereafter, on Tuesday, October 19, 2021, the Puerto Rico House of Representatives passed a version of HB 1003 that adequately reflected the Oversight Board’s position in the October 14 Letter, and as reflected in the discussions held during the October 17 Meeting.

7. On October 19, 2021, the Puerto Rico Senate adjourned a vote to consider passage of HB 1003 until October 20, 2021.

8. On October 20, 2021, the Puerto Rico Senate once again adjourned a vote to consider passage of HB 1003 until October 21, 2021.

9. On October 21, 2021, the Oversight Board issued a statement in connection with HB 1003 (the “October 21, 2021 Statement,” a true and correct copy of which is attached hereto as **Exhibit B**), explaining that (a) it “look[ed] forward to the Puerto Rico Senate’s upcoming vote” on HB 1003; (b) “[f]ailure to enact House Bill 1003 . . . puts Puerto Rico at risk of losing a historic opportunity to sustainably recover from years of economic decline, governance failures, and fiscal recklessness; and (c) “[i]f House Bill 1003 . . . is not enacted into law by 2 p.m. AST on Friday, October 22, 2021, the Oversight Board will be forced to seek adjournment of the confirmation hearing in the U.S. District Court for the District of Puerto Rico.” October 21, 2021 Statement at 1.

10. Subsequently, on October 21, 2021, Senator Dalmau, President of the Puerto Rico Senate, (a) announced that HB 1003, as approved by the House on October 19, 2021, lacks sufficient votes to pass in the Puerto Rico Senate; (b) adjourned consideration of HB 1003; and (c) stated that if the Puerto Rico House of Representatives reconsidered and made certain amendments to HB 1003, the Puerto Rico Legislature could work together to bring the HB 1003 to a vote, and “[i]f not, it’s over.” *Title III Exit Legislation in Limbo After Senate Shelves Vote, Calls House Back to Bargaining Table*, Reorg Research, October 21, 2021, a true and correct copy of which is attached hereto as **Exhibit C**.

11. On October 22, the Court entered the Order (1) acknowledging the “‘shelving’ of House Bill 1003 by the Senate and the recess of the House until October 26, 2021”; (2) explaining “it [is] unlikely that the deadline announced” by the Oversight Board “will be met”; and (3) directing various “counsel and individuals to appear for a telephonic conference on Monday,

October 25, 2021, at 9:00 a.m. (Atlantic Standard Time) [(the “Status Conference”)] to explain the status of the proposed Plan of Adjustment and any alternative measures in light of the absence of the contemplated legislation.” Order at 1-2.

12. Prior to receiving the Court’s Order, the Oversight Board had intended to file an urgent motion (the “Urgent Motion”) after 2:00 p.m. (AST) on October 22, 2021 seeking an order (a) adjourning the Confirmation Hearing to a date to be determined; (b) relieving the Oversight Board and parties in interest that have filed a timely objection to or statement on confirmation of the Plan from all pending deadlines established in this Court’s orders³ in connection with the Confirmation Hearing; and (c) directing the Oversight Board to submit a status report on or before November 8, 2021 concerning its intentions with respect to the Plan.⁴

13. The Oversight Board submits good cause exists for the adjournment of the Confirmation Hearing in light of the state of affairs concerning the Plan-enabling legislation.

14. As explained in the Status Report, the Oversight Board has been working closely with Governor Pierluisi and the Commonwealth administration towards confirmation of the Plan, and the Oversight Board was prepared to accept HB 1003 as passed in the Puerto Rico House of Representatives on October 19, 2021. The Puerto Rico Senate, however, is refusing to obtain

³ These orders consist of: (1) *Order (I) Approving Disclosure Statement, (II) Fixing Voting Record Date, (III) Approving Confirmation Hearing Notice and Confirmation Schedule, (IV) Approving Solicitation Packages and Distribution Procedures, (V) Approving Forms of Ballots, and Voting and Election Procedures, (VI) Approving Notice of Non-Voting Status, (VII) Fixing Voting, Election, and Confirmation Deadlines, and (VIII) Approving Vote Tabulation Procedures* [ECF No. 17639] (the “Solicitation Procedures Order”); (2) *Amended Order Establishing Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [ECF No. 18394] (the “Amended Confirmation Procedures Order”); and (3) *Order Regarding Procedures for Hearing on Confirmation of Plan of Adjustment* [ECF No. 18502] (the “Confirmation Hearing Procedures Order”).

⁴ The Oversight Board and Debtors reserve all of their rights to file the Urgent Motion at any point after the Status Conference.

passage of HB 1003 without amendment. The Oversight Board has made clear that, to proceed with seeking confirmation of the Plan, the Senate must pass HB 1003 as approved by the House and without amendment.

15. The Plan currently requires adequate legislation authorizing new debt issuances and contingent value instruments because certain creditors requested that legislation to potentially enhance the trading value of the new debt, and not because legislation is required to issue debt in a Title III plan of adjustment. Without the legislation, the Plan cannot be confirmed.

16. Therefore, the Oversight Board believes it should re-engage with creditors and determine how it will modify the Plan. Depending on the ultimate modification adopted, there may be a need for a supplement to the disclosure statement and a hearing thereon.

17. As the Oversight Board made clear in its October 21, 2021 Statement, the “Oversight Board and a diverse group of stakeholders ranging from unions, retirees, bondholders and other creditors, and bond insurers agreed on a Plan that is the best possible outcome given the difficult circumstances that Puerto Rico has had to manage for the past several years.” October 21, 2021 Statement at 2. We look forward to the Status Conference.

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Dated: October 22, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer